

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

February 5, 2009

A meeting of the Board of Environmental Protection was held on Thursday, February 5, 2009 at the Holiday Inn / Ground Round, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Sue Lessard, P. Andrews Nixon, Lissa Widoff and Nancy Ziegler.

Absent: Don Guimond and Matt Scott

Vacancy: There is one vacancy on the Board.

Staff:

Andrea Lani	Bureau of Air Quality
Ron Severance	Bureau of Air Quality
Hetty Richardson	Bureau of Land and Water Quality
Andy Fisk, Director	Bureau of Land and Water Quality
David Courtemanch	Bureau of Land and Water Quality
Dennis Merrill	Bureau of Land and Water Quality

Others: David P. Littell, Commissioner
Nancy Macirowski, Assistant Attorney General
Jan McClintock, Assistant Attorney General (Water Reclassification matter only)
Cindy Bertocci, BEP Executive Analyst
Terry Hanson, BEP Administrative Assistant

(Meeting adjourned at approximately 1:30 p.m.)

Draft – Pending Board Approval

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Greenhouse Gas: Commissioner Littell noted two studies looking at the embedded energy and the life cycle of specific materials (example wood products for construction vs. steel products). The studies reported that it is considered good practice to use wood materials as opposed to steel from an energy/greenhouse gas perspective. One analysis compared ethanol, gas, and biodiesel. Highlights from the studies include a finding that greenhouse gas emissions are reduced 12% by the production and combustion of ethanol and 41% by biodiesel relative to the fossil fuels they displace. Board member Nancy Ziegler asked for a copy of the studies.

Board member Richard Gould asked if there were similar comparisons on wood composite materials.

Commissioner Littell explained that he was not aware of any similar analysis of wood composites.

DEP Tire Abatement Program: Commissioner Littell, in response to a prior Board request, provided information on the Department's tire abatement program, including a handout detailing the expenditure of funds and the status of the clean up activities. Commissioner Littell provided a general explanation of how sites were prioritized: Class A sites were those that contained a million or more tires (5 sites representing roughly 85% of all tires stockpiled in Maine); Class B sites were those with 10 thousand to 1 million tires (29 sites estimated at 11% of Maine's tire stockpile); and Class C sites, fewer than 10,000. Class C sites are typically actively managed and not scheduled for clean-up because they either meet the DEP's regulatory standards or do not pose a significant fire threat.

Board member Ziegler asked about the status of the Juniper Ridge Landfill amendment application.

Commissioner Littell stated that an amendment application (submitted in September 2008) seeking approval to accept additional types of waste for disposal at the site had been withdrawn. The facility is preparing an application for an expansion of Juniper Ridge and the DEP has received technical submissions related to that application. Statute requires that this type of application be reviewed under Board jurisdiction; therefore, the Department will provide notice once the application has been received.

Legislative: Commissioner Littell reviewed briefly the top 6 bills being tracked by the Department:

1. An Act to Amend the Site Location of Development Law to Include Consideration of Greenhouse Gas Emissions. This bill contains language that would establish review criteria associated with greenhouse gas impacts using a no unreasonable impact approach, and would provide authority to the Department for an off-set mitigation program.

2. An Act to Update the Site Location of Development Law. The bill would address growth (sprawl) by encouraging large development projects to be located in locally identified growth zones or urban census tracks.
3. An Act to Support Collection and Proper Disposal of Unused Drugs. This bill promotes pharmaceutical product stewardship by developing a system to safely collect and dispose of drugs to prevent them from being disposed of in wastewater treatment and residential septic systems.
4. Bill regarding the Groundwater Fund proposal would eliminate groundwater fund coverage for Voluntary Response Action Project “VRAP” sites (DEP’s brownfields program). Without limiting coverage under the fund, the Department would need to consider a fee increase.
5. Mercury. The bill would ban two mercury containing products (recoil system in fire arms and vehicle wheel weights) and enhance the existing thermostat collection program.
6. Budget. DEP’s supplemental emergency budget passed. The biennial budget work will begin next week with the Department scheduled for a February 23, 2009 briefing.

Board member M. Wing Goodale asked if all towns have designated growth zones.

Commissioner Littell explained that not all towns have designated growth zones. DEP expects legislative discussion concerning implementation of the Informed Growth Act this session. The DEP’s proposed changes to the Site Law would be consistent with the Informed Growth Act.

Board member Richard Gould noted his understanding was that a bill to repeal the Informed Growth Act has been introduced this session.

Commissioner Littell confirmed that Senator Hasting has sponsored a bill to repeal the Act.

Board member Nancy Ziegler asked if the efforts to direct growth are based on the Oregon model.

Commissioner noted that he is not familiar with the Oregon model and explained that most of the development planning occurs at the State Planning Office.

Board Chair, Sue Lessard, explained that her understanding is that all towns are required to have comprehensive plans; however, she noted that communities with approved plans also have the ability to modify growth zones in response to a development project resulting in possible development outside the original growth zone.

B. COMMENTS FROM THE BEP CHAIR: Chair Lessard introduced Assistant Attorney General Nancy Macirowski for a briefing on a recent Superior Court decision.

Ms. Macirowski explained that the Court affirmed the Board’s decision in the matter of Pond View, Inc. v. Board of Environmental Protection which denied a request to extend the time of “temporarily out-of-service” status for an underground oil storage facility and requiring removal of the facility. The Board’s decision not to accept into the appeal record certain evidence related to other facilities was upheld by the

Superior Court. A copy of this decision will be provided to the Board's Executive Analyst.

C. EXECUTIVE ANALYST COMMENTS: NONE

D. BOARD CALENDAR: Reviewed.

E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING:

Board member Elizabeth Ehrenfeld noted for other Board members her email request for follow-up concerning: (1) Status of license transfer from Red Shield Environmental to Red Shield Acquisition; (2) Information on which wind power project is being supported by the CMP application for expansion of the Bigelow substation.

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

The Board voted (5-0-2-2) on a motion to approve consent agenda item 1 as presented.

Board members Elizabeth Ehrenfeld, P. Andrews Nixon, Sue Lessard, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board members M. Wing Goodale and Richard Gould abstained. Board members Don Guimond and Matt Scott were absent. There is one vacancy.

1. BEP Minutes – October 2, 2008 (approval)

The Board voted (6-0-1-2) on a motion to approve consent agenda item 2 as presented.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, P. Andrews Nixon, Lissa Widoff and Nancy Ziegler voted to support the motion. Board member Sue Lessard abstained. Board members Don Guimond and Matt Scott were absent. There is one vacancy.

2. BEP Minutes – October 16, 2008 (approval)

The Board voted (7-0-0-2) on a motion to approve consent agenda item 3 as presented.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Sue Lessard, P. Andrews Nixon, Lissa Widoff and Nancy Ziegler voted to support the motion. Board members Don Guimond and Matt Scott were absent. There is one vacancy.

3. BEP Minutes – December 18, 2008 (approval)

The Board voted (7-0-0-2) on a motion to approve consent agenda item 4 as presented.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Sue Lessard, P. Andrews Nixon, Lissa Widoff and Nancy Ziegler voted to support the motion. Board members Don Guimond and Matt Scott were absent. There is one vacancy.

4. MERCY HEALTH SYSTEM OF MAINE, Portland – Administrative Consent Agreement (BLWQ – Water)

The Board voted (7-0-0-2) on a motion to table consent agenda item 5 and requested that the Department provide information on the compliance history of New Meadows Abatement Inc.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Sue Lessard, P. Andrews Nixon, Lissa Widoff and Nancy Ziegler voted to support the motion. Board members Don Guimond and Matt Scott were absent. There is one vacancy.

5. NEW MEADOWS ABATEMENT, INC., Islesboro – Administrative Consent Agreement (BRWM)

III. Regular Agenda

1. CHAPTER 159, CONTROL OF VOLATILE ORGANIC COMPOUNDS FROM ADHESIVES AND SEALANTS // NEW (post to public hearing)

Staff: Andrea Lani, Bureau of Air Quality

The Board voted (7-0-0-2) on a motion to post to public hearing amendments, including changes presented in the errata sheet (dated 2/5/09), to Chapter 159, Control of Volatile Organic Compounds from Adhesives and Sealants. The proposed amendments are based on a model rule developed by the Ozone Transport Commission and include, in part: limitations on the VOC content of aerosol adhesives and surface preparation solvents, prohibition on sale of adhesives and sealants that exceed the VOC limits, provisions for alternative add-on control systems, and requirements for cleanup of solvents, labeling and storage. A public hearing on March 19, 2009 is anticipated and the deadline for submission of written comment is March 30, 2009. The vote was taken pursuant to 38 M.R.S. Section 341-D(1-B) and 585-A.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Sue Lessard, P. Andrews Nixon, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board members Don Guimond and Matt Scott were absent. There is one vacancy.

2. CHAPTER 160, OUTDOOR WOOD BOILER REPLACEMENT AND BUY BACK PROGRAM // NEW (adoption)

Staff: Ron Severance, Bureau of Air Quality

The Board voted (7-0-0-2) on a motion to adopt new Chapter 160, Outdoor Wood Boiler Replacement and Buy Back Program. The rule establishes a non-lapsing outdoor wood boiler fund to upgrade, purchase and replace problem boilers; the criteria by which a boiler is determined to create a nuisance or public health threat; and the eligibility requirements for participation in the fund for compensation, removal or possible replacement of nuisance boilers. The motion included changes to section 4.D(3) as follows:

(3) an estimate of the cost of the replacement heating appliance, ~~and installation~~ and disposal costs.

The Board voted pursuant to 38 M.R.S. Sections 341-D(1-B), Public Law 2007 Chapter 190 and Public Law 2007 Chapter 680.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Sue Lessard, P. Andrews Nixon, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board members Don Guimond and Matt Scott were absent. There is one vacancy.

3. CHAPTER 555, STANDARDS FOR THE ADDITION OF TRANSPORTED WASTES TO WASTEWATER TREATMENT FACILITIES // REPEAL and REPLACE (adoption)

Staff: Dennis Merrill, Bureau of Land and Water Quality

The Board voted (7-0-0-2) on a motion to adopt Chapter 555, Standards for the Addition of Transported Wastes to Wastewater Treatment Facilities, repeal and replace. This regulation promotes management of wastewater treatment facilities by establishing standards for the addition of non-hazardous wastes from septic tanks, cesspools, holding tanks, etc. that are transported to licensed wastewater treatment facilities for treatment and disposal. The Board voted pursuant to 38 M.R.S. Section 341-D(1-B) and 1304(1).

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Sue Lessard, P. Andrews Nixon, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board members Don Guimond and Matt Scott were absent. There is one vacancy.

There was a short break in the agenda as the Board waited for an interested party to arrive. During the break, Board member Nancy Ziegler asked about the procedural status of the Mallinckrodt appeal.

Assistant Attorney General Jan McClintock explained that Chair Lessard granted the request for an administrative stay and that decision was not appealed to the full Board. The Chair's ruling stayed the Board's proceeding until the U.S. District Court decides on the Department's pending motion to dismiss. It is anticipated that the Court will issue a decision within the next two months. Once the District Court rules, the Board will re-evaluate its schedule for processing the appeal.

4. 2008 PROPOSED CHANGE IN WATER QUALITY CLASSIFICATION FOR 0.3 MILE SEGMENT OF LONG CREEK (discussion / decision)

Staff: Andrew Fisk, Director, Bureau of Land and Water Quality
David Courtemanch, Bureau of Land and Water Quality

The Board considered the motion filed by the Conservation Law Foundation to require disclosure of new evidence, to stay the proceedings and to grant a new hearing on the Department's proposal to correct to the classification of the Westbrook segment of the main stem of Long Creek. Following a discussion of the motion, Mr. Hinchman representing the Conservation Law Foundation withdrew the motion.

The Board voted (4-3-0-2) to recommend to the Legislature that it correct the classification of the 0.3 mile segment of the mainstem of Long Creek that is located in Westbrook, specifying Class C. The vote was taken pursuant to 38 M.R.S. § 464.

Board members M. Wing Goodale, Richard Gould, Sue Lessard, and Lissa Widoff voted to support the motion. Board members Elizabeth Ehrenfeld, P. Andrews Nixon, and Nancy Ziegler voted opposed. Board members Don Guimond and Matt Scott were absent. There is one vacancy.

5. CHAPTER 335, SIGNIFICANT WILDLIFE HABITAT / AMENDMENT (adoption)
Staff: Hetty Richardson, Bureau of Land and Water Quality

The Board voted (7-0-0-2) on a motion to adopt the proposed amendments to Chapter 335, Significant Wildlife Habitat. The amendments update references to statute and rule, provide additional guidance on mitigation, clarify compensation requirements, and establish a 3 region approach to the identification of significant vernal pool habitat. The vote was taken pursuant to 38 M.R.S. Section 341-D(1-B) and 480-A to 480-FF

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Sue Lessard, P. Andrews Nixon, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board members Don Guimond and Matt Scott were absent. There is one vacancy.